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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,653	03/18/2004	John McCafferty	05569.0004.DVUS12	8022

7590 10/11/2007  
HOWREY SIMON ARNOLD & WHITE, LLP  
Attention: Box No. 34  
1299 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2402

EXAMINER
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STEELE, AMBER D

ART UNIT	PAPER NUMBER
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1639

MAIL DATE	DELIVERY MODE
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10/11/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/803,653

Applicant(s)

MCCAFFERTY ET AL.

Examiner

Amber D. Steele

Art Unit

1639

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 24 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires five months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached "Notice to Comply". (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-5.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

  
MARK L. SHIBUYA  
PRIMARY EXAMINER

*Advisory Action Continued*

The amendment filed September 24, 2007 under 37 CFR 1.116 in reply to the final rejection has been considered but is not deemed to place the application in condition for allowance and will not be entered because of the following:

a. The proposed amendment requires further consideration and/or search (e.g. the new limitation “the only nucleotide sequences derived from filamentous bacteriophage in the phagemid genome are an origin of replication and a nucleotide sequence encoding a gene III capsid protein” of claim 1). Previously, the claims read that the phagemid genome comprised an ori and gene III capsid (emphasis added). The claim amendments received on September 24, 2007 read that the phagemid genome can only have filamentous bacteriophage components of an ori and gene III capsid protein (emphasis added). Thus, the scope of the phagemid genome has been limited in the claim amendments received on September 24, 2007.

b. The proposed amendment may necessitate the modification of outstanding rejection(s) to address the new limitation (e.g. the new limitation “the only nucleotide sequences derived from filamentous bacteriophage in the phagemid genome are an origin of replication and a nucleotide sequence encoding a gene III capsid protein” of claim 1).

c. The proposed amendment may necessitate the raising of new prior art rejections (e.g. the new limitation “the only nucleotide sequences derived from filamentous bacteriophage in the phagemid genome are an origin of replication and a nucleotide sequence encoding a gene III capsid protein” of claim 1).

d. There is no convincing evidence under 37 CFR 1.116(b) why the proposed amendment was not earlier presented.

Art Unit: 1639

e. Applicants arguments of the prior art of record are moot since the arguments are based on the proposed amendments that have not been entered.

f. For all the reasons above, the amendment does not place the application in better condition for allowance and/or appeal.

### ***References***

The references supplied by applicants on September 24, 2007 have not been considered because prosecution is closed and a proper IDS was not filed (please refer to MPEP § 609, 37 CFR 1.97, and 37 CFR 1.98).

### ***Future Communications***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amber D. Steele whose telephone number is 571-272-5538. The examiner can normally be reached on Monday through Friday 9:00AM-5:00PM.

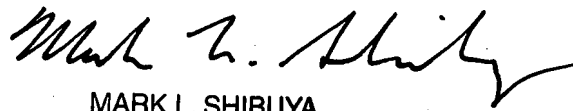
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Schultz can be reached on 571-272-0763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1639

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ADS

October 4, 2007



MARK L. SHIBUYA  
PRIMARY EXAMINER